

**U.S. District Court
Western District of Pennsylvania (Erie)
CIVIL DOCKET FOR CASE #: 1:16-cv-00233-SPB**

MCPHAIL v. HARDY, et al
Assigned to: Judge Susan Paradise Baxter
Cause: 05:552 Freedom of Information Act

Date Filed: 09/22/2016
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff**ERIC J. MCPHAIL**

represented by **ERIC J. MCPHAIL**
9092 CAPISTRANO ST SOUTH
UNIT 6402
NAPLES, FL 34113
Email: emc1973@hotmail.com
PRO SE

V.

Defendant**FEDERAL BUREAU OF INVESTIGATION**

represented by **Michael C. Colville**
United States Attorney's Office (PGH)
700 Grant Street
Suite 4000
Pittsburgh, PA 15219
(412) 894-7337
Email: michael.colville@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**EXECUTIVE OFFICES OF THE UNITED STATES ATTORNEYS**

represented by **Michael C. Colville**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/22/2016	<u>1</u>	MOTION for Leave to Proceed in forma pauperis by ERIC J. MCPHAIL. (Attachments: # <u>1</u> Complaint, # <u>2</u> Exhibit, # <u>3</u> Consent to Jurisdiction by U.S. Magistrate Judge, # <u>4</u> Envelope) (nk) (Entered: 09/22/2016)
09/22/2016		Remark: 285 USM forms received for all defendants (nk) (Entered: 09/22/2016)
09/27/2016	<u>2</u>	ORDER granting <u>1</u> Motion for Leave to Proceed in forma pauperis and the Clerk is directed to file the Complaint. The filing fee is \$350 and Plaintiff having been granted leave to prosecute in forma pauperis, pursuant to the Prison Litigation Reform Act, the Superintendent/Warden of the institution where this inmate is incarcerated is directed to remit from the prisoners account, in monthly installments, the full \$350 fee. Enclosed is a copy of the form Authorization which Plaintiff is directed to execute and return to the Clerk of Court or withdraw this action by October 6, 2016. Failure to do so may result in the dismissal of this action for failure to prosecute. IT IS HEREBY ORDERED that as soon as funds are available in the inmates prison account, the Superintendent/Warden shall submit an initial partial payment of twenty per cent (20%) of the greater of: 1) the average monthly deposits to the inmates account for the past six months, or 2) the average monthly balance in the inmates prison account for the past six months. The remittance must be accompanied by a statement of the calculations used to arrive at the amount, a copy of which the Superintendent/Warden shall furnish to the inmate. After the initial payment, if there remains any unpaid fee due and owing the Court, the Superintendent/Warden in any institution where the

		inmate is incarcerated is required by law to set aside and remit on a monthly basis twenty percent (20%) of the preceding months deposits credited to the prisoners account until the filing fee has been paid in full. Each time a deposit is made to the inmates account, the Superintendent/Warden shall set aside the deposit immediately before any disbursement is made by the inmate, until an amount equal to twenty percent (20%) of the previous months deposits is obtained. When the twenty percent (20%) amount is obtained, and the amount in the account exceeds ten dollars, it shall be transmitted in one monthly payment to the Clerk of Court. Each payment shall be clearly identified by name and number of the prisoner and the number assigned to this civil action. Payments must be made payable to Clerk, U.S. District Court of the Western District of Pennsylvania and transmitted to: Clerk of Court, U.S. District Court for Western District of Pennsylvania, 17 South Park Row, Erie, PA 16501. In the event the Plaintiff is transferred to a different correctional facility before the full filing fee is paid, this Order must be forwarded to the Superintendent/Warden of the receiving institution. This Order will be binding on the Superintendent/Warden of any correctional facility where the prisoner is incarcerated until the filing fee is paid in full in accordance with provisions of 28 U.S.C. § 1915(b)(1). Signed by Magistrate Judge Susan Paradise Baxter on 9/27/16. (Attachments: # <u>1</u> Authorization) (lrw) (Entered: 09/27/2016)
09/27/2016	<u>3</u>	COMPLAINT against THOMAS D. ANDERSON, DAVID HARDY, filed by ERIC J. MCPHAIL. (Attachments: # <u>1</u> Exhibit) (dm) (Entered: 09/28/2016)
09/27/2016	<u>4</u>	CONSENT to Trial/Jurisdiction by US Magistrate Judge by ERIC J. MCPHAIL. (dm) (Entered: 09/28/2016)
10/05/2016	<u>5</u>	Filing fee: \$350, receipt number 14668003015 (dm) (Entered: 10/06/2016)
10/11/2016	<u>6</u>	ORDER that the United States Marshal is directed to mail a copy of the complaint, summons, and this order to each defendant as directed by plaintiff. Costs shall be advanced by the United States. Signed by Magistrate Judge Susan Paradise Baxter on 10/11/16. (lrw) (Entered: 10/11/2016)
10/13/2016		Remark: Service Copies provided to U.S. Marshal's Service Erie, PA (nk) (Entered: 10/13/2016)
12/12/2016	<u>7</u>	Request to Take Judicial NOTICE of Documents Related to This Matter by ERIC J. MCPHAIL (Attachments: # <u>1</u> Exhibit, # <u>2</u> Envelope) (dm) (Entered: 12/12/2016)
12/15/2016	<u>8</u>	SUMMONS/Return of Service Returned Executed by ERIC J. MCPHAIL. THOMAS D. ANDERSON served; DAVID HARDY served; US ATTORNEY GENERAL served; US ATTORNEY served on 11/21/2016, answer due 1/20/2017. (dm) (Entered: 12/15/2016)
12/21/2016	<u>9</u>	MOTION to Extend Time to File Responsive Pleading by THOMAS D. ANDERSON, DAVID HARDY. (Attachments: # <u>1</u> Proposed Order) (Colville, Michael) (Entered: 12/21/2016)
12/21/2016	<u>10</u>	NOTICE of Change of Address by ERIC J. MCPHAIL. FILER advised that the change of address has been made on above captioned matter only. If you wish to have address changed on other matters before this court, it is your responsibility to file such a notice at each case number. This NEF has been mailed to ERIC J. MCPHAIL. (dm) (Entered: 12/21/2016)
12/21/2016	11	TEXT ORDER granting <u>9</u> Motion to Extend Time To File Responsive Pleading: Response/Answer due 2/17/2017. Signed by Magistrate Judge Susan Paradise Baxter on 12/21/16. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 12/21/2016)
12/21/2016		Update Answer Deadline: Answer due from THOMAS D. ANDERSON on 2/17/2017; DAVID HARDY on 2/17/2017 (lrw) (Entered: 12/21/2016)
12/27/2016	<u>12</u>	MOTION for Default Judgment against THOMAS D. ANDERSON, DAVID HARDY by ERIC J. MCPHAIL. (Attachments: # <u>1</u> Envelope) (dm) (Entered: 12/27/2016)
01/03/2017	13	TEXT ORDER denying <u>12</u> Motion for Default Judgment. Signed by Magistrate Judge Susan Paradise Baxter on 1/3/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw)

		(Entered: 01/03/2017)
02/15/2017	<u>14</u>	ANSWER to <u>3</u> Complaint by THOMAS D. ANDERSON, DAVID HARDY. (Colville, Michael) (Entered: 02/15/2017)
03/08/2017	15	TEXT ORDER, Case Management Conference via telephone set for 3/17/2017 at 11:00 AM before Magistrate Judge Susan Paradise Baxter. Counsel for Defendants is directed to make arrangements for all parties to participate by conference call on the above date and time. Plaintiff is to provide Defendants' counsel with his contact information. Signed by Magistrate Judge Susan Paradise Baxter on 3/8/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 03/08/2017)
03/16/2017	16	TEXT ORDER, Defendants' Willingness to proceed before Magistrate Judge due by 3/24/2017. Signed by Magistrate Judge Susan Paradise Baxter on 3/16/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 03/16/2017)
03/17/2017	<u>17</u>	Minute Entry for proceedings held before Magistrate Judge Susan Paradise Baxter: Case Management Conference held on 3/17/2017. Status Conference via telephone set for 5/24/2017 at 3:00 PM before Magistrate Judge Susan Paradise Baxter. Counsel for Defendants is to initiate the conference call. (Court Reporter: Ron Bench) (lrw) (Entered: 03/17/2017)
03/23/2017	<u>18</u>	CONSENT to Trial/Jurisdiction by US Magistrate Judge by EXECUTIVE OFFICES OF THE UNITED STATES ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION. (Colville, Michael) (Entered: 03/23/2017)
04/17/2017	<u>19</u>	Plaintiffs first Status Report and MOTION for Evidentiary Hearing by ERIC J. MCPHAIL. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Envelope) (jd) (Entered: 04/17/2017)
04/17/2017	20	TEXT ORDER Response/Briefing Schedule re <u>19</u> Motion for Evidentiary Hearing: Defendants' Response to Motion due by 4/27/2017. Signed by Magistrate Judge Susan Paradise Baxter on 4/17/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 04/17/2017)
04/27/2017	<u>21</u>	RESPONSE to Motion re <u>19</u> MOTION for Hearing filed by EXECUTIVE OFFICES OF THE UNITED STATES ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION. (Colville, Michael) (Entered: 04/27/2017)
04/28/2017	22	ORDER denying <u>19</u> Motion for Evidentiary Hearing filed by ERIC J. MCPHAIL. Signed by Magistrate Judge Susan Paradise Baxter on 4/28/2017. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (dm) (Entered: 04/28/2017)
05/19/2017	23	TEXT ORDER, Status Conference set for 5/24/2017 at 3:00 PM has been RE-SCHEDULED for 5/25/2017 at 3:00 PM before Magistrate Judge Susan Paradise Baxter. Counsel for Defendants is directed to make arrangements for all parties to participate by conference call on the above date and time. Signed by Magistrate Judge Susan Paradise Baxter on 5/19/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 05/19/2017)
05/22/2017	24	TEXT ORDER, Status Conference set for 5/25/2017 at 3:00 PM has been RE-SCHEDULED for 6/6/2017 at 10:30 AM before Magistrate Judge Susan Paradise Baxter. Signed by Magistrate Judge Susan Paradise Baxter on 5/22/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 05/22/2017)
06/06/2017	<u>25</u>	Minute Entry for proceedings held before Magistrate Judge Susan Paradise Baxter: Status Conference held on 6/6/2017. Surv. video of country club to be produced for in camera review by July 14, 2017. Written response from Defendants on Gilmartin and audio surv. and #4(audio) due by July 14, 2017. Reply by Plaintiff due July 28, 2017. Vaughn index due by September 29, 2017. Status Conference set for 8/10/2017 at 11:00 AM before Magistrate Judge Susan Paradise Baxter. Defendants are to initiate the telephone conference. (Court Reporter: Ron Bench) (lrw) (Entered: 06/06/2017)

06/16/2017	<u>26</u>	NOTICE of Change of Address by ERIC J. MCPHAIL. FILER advised that the change of address has been made on above captioned matter only. If you wish to have address changed on other matters before this court, it is your responsibility to file such a notice at each case number. This NEF has been mailed to ERIC J. MCPHAIL. (jd) (Additional attachment(s) added on 6/16/2017: # <u>1</u> Envelope) (jd). (Entered: 06/16/2017)
07/27/2017	<u>27</u>	PLAINTIFFS CHALLENGE TO THE ADEQUACY OF A SEARCH FOR RECORDS RESPONSIVE TO THE JUNE 15, 2016 FREEDOM OF INFORMATION ACT REQUEST (jd) (Entered: 07/27/2017)
07/27/2017	<u>28</u>	Memorandum in Support of Plaintiff's Opposition to the Use of a Glomar Response to Plaintiff's Freedom of Information Act Request Seeking Records Pertaining to Co-Defendant John J. Gilmartin (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Envelope) (jd) Modified on 7/31/2017. (dm) (Entered: 07/28/2017)
08/10/2017	<u>29</u>	Minute Entry for proceedings held before Magistrate Judge Susan Paradise Baxter: Status Conference held on 8/10/2017. Court expressed intent to appoint special master under Rule 53. Court will take <u>27</u> and <u>28</u> under advisement and will issue written opinion. Government to produce password/code to Court for proper in camera review of CD. (Court Reporter: Ron Bench) (dm) (Entered: 08/10/2017)
08/22/2017	<u>30</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings re Case Management held on March 17, 2017 before Judge Susan Paradise Baxter. Court Reporter/Transcriber Ronald J. Bench, Telephone number 814-464-9613. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely, electronically available to the public without redaction after 90 calendar days. For redaction purposes, or otherwise, during this 90 day period a copy of the transcript may be purchased from the court reporter/transcriber or viewed at the clerk's office public terminal. Any Notice of Intent to Request Redaction and Redaction Request must be separately mailed to the court reporter of said proceedings. Notice of Intent for Redaction of Personal Data Identifiers due by 8/29/2017. Redaction Request due 9/12/2017. Redacted Transcript Deadline set for 9/22/2017. Release of Transcript Restriction set for 11/20/2017. (jd) (Entered: 08/22/2017)
08/22/2017	<u>31</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings re Status Conference held on June 6, 2017 before Judge Susan Paradise Baxter. Court Reporter/Transcriber Ronald J. Bench, Telephone number 814-464-9613. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely, electronically available to the public without redaction after 90 calendar days. For redaction purposes, or otherwise, during this 90 day period a copy of the transcript may be purchased from the court reporter/transcriber or viewed at the clerk's office public terminal. Any Notice of Intent to Request Redaction and Redaction Request must be separately mailed to the court reporter of said proceedings. Notice of Intent for Redaction of Personal Data Identifiers due by 8/29/2017. Redaction Request due 9/12/2017. Redacted Transcript Deadline set for 9/22/2017. Release of Transcript Restriction set for 11/20/2017. (jd) (Entered: 08/22/2017)
08/22/2017	<u>32</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings re Status Conference held on August 10, 2017 before Judge Susan Paradise Baxter. Court Reporter/Transcriber Ronald J. Bench, Telephone number 814-464-9613. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely, electronically available to the public without redaction after 90 calendar days. For redaction purposes, or otherwise, during this 90 day period a copy of the transcript may be purchased from the court reporter/transcriber or viewed at the clerk's office public terminal. Any Notice of Intent to Request Redaction and Redaction Request must be separately mailed to the court reporter of said proceedings. Notice of Intent for Redaction of Personal Data Identifiers due by 8/29/2017. Redaction Request due 9/12/2017. Redacted Transcript Deadline set for 9/22/2017. Release of Transcript Restriction set for 11/20/2017. (jd) (Entered: 08/22/2017)

09/07/2017	<u>33</u>	MEMORANDUM ORDER that Defendants may not use a Glomar response to Plaintiff's request for "all electronic surveillance, wiretaps and audio files from [co-defendant] John J. Gilmartin." Signed by Magistrate Judge Susan Paradise Baxter on 9/7/2017. (dm) (Entered: 09/07/2017)
09/12/2017	34	TEXT ORDER, Status Conference via telephone set for 9/14/2017 at 11:00 AM before Magistrate Judge Susan Paradise Baxter. Counsel for Defendants is directed to make arrangements for all parties to participate by conference call on the above date and time. Signed by Magistrate Judge Susan Paradise Baxter on 9/12/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 09/12/2017)
09/14/2017	<u>35</u>	Minute Entry for proceedings held before Magistrate Judge Susan Paradise Baxter: Status Conference held on 9/14/2017. Motion for Reconsideration due by 9/21/2017. Opposition due within 7 days. Vaughn index due 9/29/2017. (Court Reporter: Ron Bench) (lrw) (Entered: 09/14/2017)
09/20/2017	<u>36</u>	MOTION for Reconsideration re <u>33</u> Memorandum Opinion & Order, by EXECUTIVE OFFICES OF THE UNITED STATES ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION. (Attachments: # <u>1</u> Proposed Order) (Colville, Michael) (Entered: 09/20/2017)
09/20/2017	<u>37</u>	BRIEF in Support re <u>36</u> Motion for Reconsideration filed by EXECUTIVE OFFICES OF THE UNITED STATES ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Colville, Michael) (Entered: 09/20/2017)
09/25/2017	<u>38</u>	NOTICE of Change of Address by ERIC J. MCPHAIL. FILER advised that the change of address has been made on above captioned matter only. If you wish to have address changed on other matters before this court, it is your responsibility to file such a notice at each case number. This NEF has been mailed to ERIC J. MCPHAIL. (Attachments: # <u>1</u> Envelope) (jd) (Entered: 09/25/2017)
09/27/2017	<u>39</u>	RESPONSE IN OPPOSITION TO <u>36</u> MOTION for Reconsideration filed by ERIC J. MCPHAIL. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Envelope) (jd) (Entered: 09/27/2017)
09/28/2017	<u>40</u>	RESPONSE to <u>25</u> Status Conference, Set Deadlines/Hearings, filed by EXECUTIVE OFFICES OF THE UNITED STATES ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Colville, Michael) (Entered: 09/28/2017)
09/29/2017	<u>41</u>	MOTION for Leave to File Documents Under Seal by FEDERAL BUREAU OF INVESTIGATION. (Attachments: # <u>1</u> Proposed Order) (Colville, Michael) (Entered: 09/29/2017)
10/02/2017	42	TEXT ORDER Response/Briefing Schedule re <u>36</u> Motion for Reconsideration: Response to Motion due by 10/10/2017. Signed by Magistrate Judge Susan Paradise Baxter on 10/2/17. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 10/02/2017)
10/06/2017	<u>43</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings re Status Conference held on 9/14/2017 before Judge Susan Paradise Baxter. Court Reporter/Transcriber Ron Bench, Telephone number 814-464-9613. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely, electronically available to the public without redaction after 90 calendar days. For redaction purposes, or otherwise, during this 90 day period a copy of the transcript may be purchased from the court reporter/transcriber or viewed at the clerk's office public terminal. Any Notice of Intent to Request Redaction and Redaction Request must be separately mailed to the court reporter of said proceedings. Notice of Intent for Redaction of Personal Data Identifiers due by 10/13/2017. Redaction Request due 10/27/2017. Redacted Transcript Deadline set for 11/6/2017. Release of Transcript Restriction set for 1/4/2018. (dm) Modified on 4/13/2018. (jd) (Entered: 10/06/2017)
10/10/2017	<u>44</u>	Remark: Returned mail stating "no mail receptacle, unable to forward", due to data entry error by docket clerk. Address corrected and letter returned to Plaintiff (jd) (Entered: 10/10/2017)

03/12/2018	<u>45</u>	REQUEST for Status Conference by ERIC J. MCPHAIL. (Attachments: # <u>1</u> Envelope) (dm) (Entered: 03/12/2018)
09/21/2018		Case Reassigned to Judge Susan Paradise Baxter. Magistrate Judge Susan Paradise Baxter no longer assigned to the case. (kly) (Entered: 09/21/2018)
10/26/2018	<u>46</u>	ORDER upon consideration of Defendant, FBI's Motion for Leave of Court to File Records Referenced in David M. Hardys Declaration Under Seal <u>41</u> , IT IS HEREBY ORDERED that the Motion is GRANTED; IT IS FURTHER ORDERED that the Government shall not be required to file a redacted version of the document. The Clerks Office shall docket the seal document without requiring the Government to first file a redacted version. Signed by Judge Susan Paradise Baxter on 10/26/18. (lrw) (Entered: 10/26/2018)
10/30/2018	<u>47</u>	SEALED DOCUMENT by FEDERAL BUREAU OF INVESTIGATION. This document Sealed pursuant to <u>46</u> Order on Motion for Leave to File Documents Under Seal. (jv) (Entered: 10/30/2018)
10/31/2018	<u>48</u>	ORDER that Defendants motion to reconsider the Courts Order dated September 7, 2017 <u>36</u> is GRANTED, the Courts Memorandum Order <u>33</u> is VACATED, and Defendants use of a Glomar response to Plaintiffs request for all electronic surveillance, wiretaps and audio files from [co-defendant] John J. Gilmartin is upheld. Signed by Judge Susan Paradise Baxter on 10/31/18. (lrw) (Entered: 10/31/2018)
10/31/2018	49	ORDER denying as moot <u>45</u> Motion for Hearing filed by ERIC J. MCPHAIL, in light of this Court's Memorandum Order entered on this date. This Order is without prejudice to Plaintiff's right to request a telephonic hearing by specifying the matters that he believes may require the Court's attention. Signed by Judge Susan Paradise Baxter on 10/31/2018. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (fcf) (Entered: 10/31/2018)
12/10/2018	50	TEXT ORDER, Telephonic Status Conference set for 12/17/2018 at 11:30 AM before Judge Susan Paradise Baxter. Counsel for Defendants is directed to make arrangements for all parties to participate by conference call on the above date and time. Signed by Judge Susan Paradise Baxter on 12/10/18. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lrw) (Entered: 12/10/2018)